

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6087 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

BATUKBHAI K SOLANKI

Appearance:

1. Special Civil Application No. 6087 of 1991
MR PRANAV G DESAI for Petitioner No. 1
MR TR MISHRA for Respondent No. 1
-

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/11/2001

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the Gujarat State Road Transport Corporation has challenged the judgment and award dated 14.1.1991 passed by the Labour Court, Bhavnagar in Reference (LCB) No. 264 of 1989 whereby the Labour Court directed the Corporation to reinstate the respondent to

his original post of conductor with continuity of service and 50% backwages.

2. On the charge that when the respondent was serving as a conductor on 27.7.1987, the respondent had not issued tickets and had not recovered fare from five passengers, the Corporation initiated a departmental inquiry against the respondent and ultimately by order dated 11.7.1988 the Corporation dismissed the respondent from service. The respondent's departmental appeal was dismissed by the Divisional Controller. Hence, the respondent raised an industrial dispute which was referred to the Labour Court, Bhavnagar.

The Labour Court held that the charge against the respondent was that he had not issued tickets to five passengers and had also not recovered fare; that the concerned passengers in the bus were not examined at the departmental inquiry and that the respondent-conductor was not given an opportunity to examine/cross-examine such passengers. Hence, the misconduct alleged against the respondent was not proved. On this basis, the Labour Court set aside the order of dismissal after observing that the respondent was negligent in not issuing tickets to the passengers. Hence, the Labour Court passed the order for reinstatement with 50% backwages.

3. The learned counsel for the petitioner-Corporation has submitted that as per the settled legal position, at such departmental inquiries the Corporation is not required to examine the passengers in the bus. In support of the said submission, strong reliance has been placed on the decision of the Apex Court in 1982(1) LLJ 46. It is further submitted that the respondent had committed certain misconducts in the past for which default card was produced before the Labour Court.

4. There is considerable substance in the grievance made by the learned counsel for the petitioner-Corporation that at such department inquiry the Corporation is not bound to examine the passengers in the bus as the passengers travelling from one place to another would not like to be dragged into such proceedings and that the evidence of the checking party can be relied upon for proving the misconduct against the conductor. Hence, the Labour Court clearly erred in observing that the misconduct was not proved because the passengers in the bus were not examined. Even after holding that the Labour Court erred in giving such a finding, the question still remains whether even on the

basis that the respondent was guilty of the misconduct in question, the penalty of dismissal from service was justified. A perusal of the judgment of the Labour Court indicates that the Labour Court has also examined the case from this alternative angle and held that the penalty imposed upon the respondent was disproportionate and unduly harsh. Even the case of the petitioner-Corporation was that the respondent had not issued tickets and had not collected fare from the passengers. The past defaults also pertained to non issuance of tickets and non-recovery of fare. Neither the incident in question nor the past defaults involved misappropriation of money given by the passengers.

In this view of the matter, the finding given by the Labour Court that the penalty of dismissal from service was unduly harsh and excessive does not call for any interference.

In view of the aforesaid finding, no fault can also be found with the direction of the Labour Court awarding 50% backwages to the respondent-employee.

5. In view of the above discussion, the petition deserves to be dismissed and is accordingly dismissed. Rule is discharged with no order as to costs.

(M.S. Shah, J.)
sundar/-